IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2391 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAMMED RAFIK ABDUL REHMAN MENON

Versus

COMMISSIONER OF POLICE A'BAD CITY

Appearance:

1. Special Civil Application No. 2391 of 2002

MR MIG MANSURI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 21/06/2002

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 2.2.2002 passed against him by the passed

by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu.

2. The grounds of detention supplied to the detenu reveals that the order of detention has been passed against the detenu as the detenu is a "chronic bootlegger" and is involved in four different criminal cases punishable under the provisions of the Bombay Prohibition Act. Out of these four cases, the offence shown at Sr.No.1 was allegedly committed on 7.10.2001 and the last offence shown in the grounds of detention was committed on 28.1.2002. Date of arrest of the present petitioner is shown in all the four cases on different dates. So, it can be inferred that the police could not have arrested him prior to 21.1.2002 even for the offences allegedly committed on 7.10.2002. The petitioner has challenged the order of detention on various grounds mentioned in the memo of the petition. However, ld. counsel Mr. Mansuri, appearing for the petitioner has mainly focussed on one ground and has submitted that the activities of the petitioner mentioned in the grounds of detention cannot be said to be activities affecting the "public order". So, the Police Commissioner of Ahmedabad had no scope to exercise the jurisdiction or powers vested in him under Section 3(2) of PASA Act. The subjective satisfaction recorded by the authority says that the activities of the petitioner affect the "public order", is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. It is submitted that in one of the offences, name of the petitioner was not disclosed at all and he has been falsely implicated. Mr. Mansuri has taken this Court through the grounds of detention and relevant record available and has submitted that this in the case of similar set of facts, this Court (Coram : A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in absence of any other relevant and cogent set of facts and such set of facts should be available before the detaining authority with credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material against the detenu is registered prohibition cases wehrein also there is nothing to indicate any disturbance

to the "public order". So, mere registration of criminal offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority to pass such order affecting adversely to the personal liberty.

3. Ld. AGP Mr. Kogje has submitted that decision of the Apex Court reported in the case of Kanuji S.Zala v/s State of Gujarat & Ors.,reported in 1999(2) GLH 415, can be applied to the facts of this case and he has placed reliance on the relevant part of para-6 of the decision, wherein Apex Court has said :-

" As already stated earlier, in this case, the Detaining Authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The Detaining Authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

4. Against that, ld. counsel Mr. Mansuri for the petitioner has rightly submitted that this Court has considered the ratio of the very decision of the Apex Court viz. Kanuji Zala (supra) while dealing with LPA No. 223/2000 in Spl.C.A. No. 554/2000 decided on 22.8.2000 in the case of Ashok Balabhai Makwana. In para-5 of the said decision, it has been observed that Apex Court in the decision of Kanuji Zala (Supra) has said that what is required to be considered in such cases is whether there was credible material before the detaining authoirty on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of the public order as defined in the PASA Act. The contention is that the touch-stone in such cases is the presence of credible material before the detaining authority. The Apex Court was dealing with the case of a detenu involved in the offences punishable under the Bombay Prohibition Act. In that case, there was credible material over and above registered criminal offences punishable under the Bombay Prohibition Act. Whereas in the case on hand, such credible material was not there before the detaining authority while passing the order of detention. Similar facts and circumstances were also there in the case of Ashok Balaji Makwana

(supra) and, therefore only, the Division Bench allowed the appeal by reversing the finding recorded by the ld. Single Judge and quashed the order of detention passed by the detaining authority. In my view, ratio of the decision of the Division Bench in the case of Ashok Balabhai Makwana (supra) is applicable to the facts of the present case. Decision of the ld. Single Judge in Spl.C.A. No. 143/2002 in the case of Babuji Jakshi Thakore also helps the case of the present petitioner. So, without going into the merits of the other grounds narrated in the memo of the petition, the order of detention can be quashed on the sole ground that the detaining authority was not right in recording subjective satisfaction to the effect that the activities of the detenu are against the maintenance of "public order" in absence of credible material.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 2.2.2002 passed by Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

21-6-2002 [C. K.BUCH, J]
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